

Summary of FLSA Exemption Criteria

This chart summarizes the FLSA exemption criteria in part 551 of title 5, Code of Federal Regulations, and should be used in conjunction with those regulations.

REGULAR DUTIES

EMPLOYEE CATEGORY

Executive Exemption Criteria

Administrative Exemption Criteria

Professional Exemption Criteria

GS employees **at or above GS-7**, and **GS** employees **above GS-9** in positions subject to section 7(k) of the Act, that is, fire and law enforcement personnel on special shift work schedules, and **FWS** supervisors classified at **situation 3 or 4**.

551.205: To be **EXEMPT**, the employee need meet only the primary duty test in 551.205(a).

(The 80 percent test in 551.205(b) does not apply.)

551.206: To be **EXEMPT**, the General Schedule employee must meet the primary duty test in 551.206(a), the nonmanual work test in 551.206(b), and the discretion and independent judgment test in 551.206(c).

(The 80 percent test in 551.206(d) does not apply.)

551.207: To be **EXEMPT**, the General Schedule employee must meet the primary duty test in 551.207(a), the intellectual and varied work test in 551.207(b), and the discretion and independent judgment test in 551.207(c).

(The 80 percent test in 551.207(d) does not apply.)

551.206: Not applicable to FWS supervisors.

551.207: Not applicable to FWS supervisors.

GS employees in **GS-7, 8, or 9** positions subject to section 7(k) of the Act, that is, fire and law enforcement personnel on special shift work schedules.

551.205: To be **EXEMPT**, employees in GS-7, 8, or 9 '7(k)' positions must meet both of the tests in 551.205. Those tests are the primary duty test in 551.205(a) and the 80 percent test in 551.205(b).

551.206: To be **EXEMPT**, the General Schedule employee must meet the primary duty test in 551.206(a), the nonmanual work test in 551.206(b), and the discretion and independent judgment test in 551.206(c).

(The 80 percent test in 551.206(d) does not apply.)

551.207: To be **EXEMPT**, the General Schedule employee must meet the primary duty test in 551.207(a), the intellectual and varied work test in 551.207(b), and the discretion and independent judgment test in 551.207(c).

(The 80 percent test in 551.207(d) does not apply.)

FWS supervisors classified **below situation 3**.

551.205: To be **EXEMPT**, FWS supervisors classified below situation 3 must meet both of the tests in 551.205. Those tests are the primary duty test in 551.205(a) and the 80 percent test in 551.205(b).

551.206: Not applicable to FWS supervisors.

551.207: Not applicable to FWS supervisors.

GS employees at **GS-5 or 6**.

551.205: To be **EXEMPT**, employees at GS-5 or 6 must meet both of the tests in 551.205. Those tests are the primary duty test in 551.205(a) and the 80 percent test in 551.205(b).

551.206: To be **EXEMPT**, an employee at GS-5 or 6 must meet the four tests in 551.206. Those tests are the primary duty test in 551.206(a), the nonmanual work test in 551.206(b), the discretion and independent judgment test in 551.206(c), and the 80 percent test in 551.206(d).

551.207: To be **EXEMPT**, an employee at GS-5 or 6 must meet the four tests in 551.207. Those tests are the primary duty test in 551.207(a), the intellectual and varied work test in 551.207(b), the discretion and independent judgment test in 551.207(c), and the 80 percent test in 551.207(d).

551.205: To meet the 80 percent test, the employee must spend 80 percent or more of worktime in a representative workweek on supervisory and related work.

551.206: To meet the 80 percent test, the employee must spend 80 percent or more of worktime in a representative workweek on administrative work.

551.207: To meet the 80 percent test, the employee must spend 80 percent or more of work-time in a representative workweek on professional work.

GS employees **at or below GS-4**.

551.205: Not applicable

551.206: Not applicable

551.207: Not applicable

FWS nonsupervisory employees.

551.205: Not applicable

551.206: Not applicable

551.207: Not applicable

Summary of FLSA Exemption Criteria (cont.)

This chart summarizes the FLSA exemption criteria in part 551 of title 5, Code of Federal Regulations, and should be used in conjunction with those regulations.

TEMPORARY DUTIES

EMPLOYEE CATEGORY

Temporary Duties and EXEMPT Employees

Temporary Duties and NONEXEMPT Employees

Emergency Situations

GS employees at or above GS-7.
and
GS employees above GS-9 in positions subject to section 7(k) of the Act, that is, fire and law enforcement personnel on special shift work schedules.
and
FWS supervisors classified at situation 3 or 4.
and
GS employees in GS-7, 8, or 9 positions subject to section 7(k) of the Act, that is, fire and law enforcement personnel on special shift work schedules.

551.208(c): An **EXEMPT** employee becomes **NONEXEMPT** for the entire period of the temporary duties **only if** the temporary duties exceed 30 calendar days and the temporary duties are **NONEXEMPT**.

If an **EXEMPT** employee becomes **NONEXEMPT** under 551.208(c), the employee is **NONEXEMPT** for the entire period of the temporary duties. Pay may need to be recalculated as explained in 551.208(c)(2).

551.208(b): A **NONEXEMPT** employee becomes **EXEMPT** for the entire period of the temporary duties **only if** the temporary duties exceed 30 calendar days and the temporary duties are **EXEMPT**.

If a **NONEXEMPT** employee becomes **EXEMPT** under 551.208(b), the employee is **EXEMPT** for the entire period of the temporary duties. Pay may need to be recalculated as explained in 551.208(b)(2).

551.208(d): Regardless of grade level, in an emergency--

A **NONEXEMPT** employee remains **NONEXEMPT** whether the employee performs **EXEMPT** or **NONEXEMPT** work.

The exemption status of an **EXEMPT** employee must be determined on a workweek basis. This determination will result in the employee either remaining **EXEMPT** or becoming or **NONEXEMPT** for that workweek. The employee becomes **NONEXEMPT** for any workweek in which the employee performs **NONEXEMPT** work or duties for more than 20 percent of the worktime in a given workweek.

FWS supervisors classified below situation 3.

551.208(c)(3): An FWS supervisor classified **below situation 3** who is performing temporary duties becomes **NONEXEMPT** for the given workweek only if the employee performs **NONEXEMPT** duties for 20 percent or more of the worktime in that workweek.

551.208(b): Not applicable to--
FWS supervisors classified **below situation 3**.

Emergency situation regulations apply to all employees.

GS employees at or below **GS-5 or 6**.

551.208(c)(3): An **EXEMPT** employee at GS-5 or GS-6 who is performing temporary duties becomes **NONEXEMPT** for the given workweek only if the employee performs **NONEXEMPT** duties for 20 percent or more of the worktime in that workweek.

551.208(b): Not applicable to--
GS employees at or below **GS-5 or 6**.

GS employees at or below GS-4

551.208(b): Not applicable to--
GS employees at or below GS-4.

551.208(b): Not applicable to--
GS employees at or below GS-4.

FWS nonsupervisory employees.

551.208(b): Not applicable to--
FWS nonsupervisory employees.

551.208(b): Not applicable to--
FWS nonsupervisory employees.

Summary of FLSA Exemption Criteria (cont.)

This chart summarizes the FLSA exemption criteria in part 551 of title 5, Code of Federal Regulations, and should be used in conjunction with those regulations.

FOREIGN EXEMPTION

551.209: Regardless of grade level, an employee is **NOT** subject to the minimum wage and overtime provisions of the Act if *either* 1 *or* 2 is met.

① The employee is permanently assigned to an exempt area *and* performs no hours of work in a workweek in a nonexempt area.

② An employee on TDY performs all hours of work in a workweek in an exempt area.

“Exempt area” and “nonexempt area” are defined in 551.102.

Foreign exemption regulations apply to all employees.

SPECIAL EXEMPTIONS/ EXCLUSIONS

551.210: **Availability Pay.**

The following employees are **EXEMPT** from the hours of work and overtime pay provisions of the Act:

(a) A criminal investigator receiving availability pay under 550.181 of title 5, Code of Federal Regulations; and

(b) A pilot employed by the United States Customs Service who is a law enforcement officer as defined in section 5541(3) of title 5, United States Code, and who receives availability pay under section 5545a(i) of title 5, United States Code.

551.211: **Statutory exclusion.**

A customs officer who receives overtime pay under subsection (a) or premium pay under subsection (b) of section 267 of title 19, United States Code, for time worked may not receive pay or other compensation for that work under any other provision of law. “Customs officer” means a United States Customs Service supervisory or nonsupervisory customs inspector or supervisory or nonsupervisory canine enforcement officer.